TECHNOLOGIES MANAGEMENT INC.

163 E. Morse Blvd.
Suite 300
P.O. Drawer 200
Winter Park, FL
32790-0200

407-740-8575
Fax: 407-740-0613

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December 19, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 94-129
Comments of Operator Service Company

Dear Mr. Caton:

Enclosed for filing are the original and nine (9) copies of the Comments of Operator Service Company for the Notice of Proposed Rulemaking in CC Docket No. 94-129.

Please acknowledge receipt of this filing by date-stamping the extra copy of this cover letter and returning it to me in the self-addressed, stamped envelope provided for this purpose.

Questions regarding this filing may be directed to me at (407) 740-8575.

Yours truly,

Nanci Adler

Nanci Adler
Consultant to OSC

cc: K. Smith, OSC
FCC Formal Complaints Branch (2 copies)
Enforcement Division
Common Carrier Bureau, Plaza Level
1250 23rd Street, NW
Washington, DC 20554
FCC Contractor, ITS
to file: OSC-FCC

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 94-129
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers'	)	
Long Distance Carriers	)	

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**COMMENTS OF
OPERATOR SERVICE COMPANY
ON NOTICE OF PROPOSED RULE MAKING**

Kirk Smith
Operator Service Company
1624 Tenth Street
Lubbock, Texas 79401-2607
(800) 658-6041

Nanci Adler
Technologies Management, Inc.
P.O. Drawer 200
Winter Park, FL 32790-0200
(407) 740-8575

Consultant to
Operator Service Company

Dated: December 19, 1994

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Washington, D.C. 20554

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COMMENTS OF
OPERATOR SERVICE COMPANY
ON NOTICE OF PROPOSED RULE MAKING

Introduction

Operator Service Company ("OSC") respectfully submits these comments on the Notice of Proposed Rulemaking in the captioned proceeding, released November 10, 1994.

OSC is a provider of long distance telecommunications services based in Lubbock, Texas and has been operating since 1987. OSC has a great deal of experience with the long distance presubscription process. The rules adopted in this proceeding will impact the company directly.

The Commission's goal in this rule making proceeding is to ensure that consumers are fully aware of the purpose and intent of long distance carrier selection letters of agency ("LOAs"). To accomplish this, the proposed rules should ensure that LOAs are clear and easily understood and that they do not mislead consumers.

The Commission should not, however, impede free market forces by specifying the exact language or form of the LOA. To do so will inhibit competitive efforts that go beyond the Commission's rules to benefit consumers. For example, if the complete LOA form and content was dictated by the Commission, carriers would not be able to include language that provides the consumer a credit for any PIC change charges that may apply, or a guarantee to convert the consumer back to the previous carrier if they are dissatisfied. Therefore, the Commission should limit the rules it adopts to the basic content of the LOA only.

OSC provides the following specific comments on the proposed rules and the issues for which the Commission sought comments.

Specific Language

OSC agrees with the content specified in proposed rule 64.1150 (d). The proposed rule requires "clear and unambiguous language" and is sufficient to provide the necessary consumer protection. There is no need for the Commission to dictate specific language on the LOA, particularly since some carriers may wish to add language which will work to the consumers benefit (i.e. credits for PIC charges, or satisfaction guarantees).

However to emphasize the purpose of the document, OSC suggests that specific wording directly under the signature line be specified by the Commission's rules. OSC recommends the following addition to the FCC's rules:

64.1150

> (f) Directly below the signature line, the LOA must state the following: "NOTICE: your signature on this line will change your long distance carrier."

This simple requirement will provide sufficient continuity among the industry and will clearly alert consumers as to the effect of their signature.

The Commission rules should not address the language in which LOAs are written or require bilingual LOAs. The issues raised in the Notice of Proposed Rulemaking regarding the language used in these agreeements or their translation are not telecommunications issues, but are broad-based contract issues which are better dealt with in another forum, agency or court.

Beyond these recommendations, OSC supports the proposed rules concerning content of the LOA and heartily supports the prohibition of negative LOAs in subsection (e).

Form of Document

OSC agrees with the Commission that the LOA statement should be separate from other marketing material. The LOA statement should not be hidden among marketing language such as a contest entry form or a check endorsement. However, a separate statement does not need to be on a physically separate piece of paper. As long as the LOA statement is clearly a separate statement, requiring a separate signature, the consumer will be aware of the intent of his or her actions.

For this reason, OSC suggests the following change to the proposed rules:

> 64.1150 (b) The letter of agency shall be a separate <u>statement</u> whose sole purpose is to authorize an interexchange carrier to initiate a primary interexchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary interexchange carrier change.
>
> (Recommended change is underlined)

It is unnecessary and superfluous to regulate the type of print and font to be used in LOAs. The proposed rule which requires "a sufficient size and readable type to be clearly legible" is adequate. If the Commission is compelled to specify a requirement, the requirement should be limited to the minimum size print acceptable.

<u>Business or Residential PICs</u>

Business and residential customers should be treated similarly. Disputed PICs for both types of customers may arise because the individual who signed the LOA is not authorized to do so. In businesses, the unauthorized person may be an employee; for residential customers, the unauthorized person may be a child or other relative of the account holder.

This issue warrants further Commission attention. In most cases, interexchange carriers are unable to verify that the individual who signed the LOA is the local exchange company account holder. If a PIC dispute ensues as a result of an unauthorized individual's actions, it must be clear that the individual who signed the PIC LOA is responsible for the unauthorized change, not the interexchange carrier. This unauthorized individual should also be responsible for the unauthorized PIC penalty charges (if any), as well as any disputed long distance charges.

OSC suggests that LOAs contain a statement "that the individual signing this letter of agency is authorized to do so". In this way, the burden of authorization falls to the individual signing the form. While it may not be necessary to include this language in the Commission's rules, it may well be good advice to the industry if this type of statement is recommended by the Commission.

OSC recommends that the Commission address the issue of LECs providing the billing account name/authorized individuals to interexchange carriers. Today, IXCs cannot verify that the name on the LOA is an individual authorized to make changes to an account. Only local exchange carriers have this information and they have been reluctant to provide it to IXCs. Unwanted PIC changes could be reduced if this information was made available to IXCs at a reasonable price.

OSC also recommends that PIC change charges be assessed to the entity that initiated the change. For example, if a consumer initiates the change by calling the LEC, the consumer should be charged the PIC change charge. On the other hand, if the IXC initiates the change by submitting the change to the LEC, the IXC should be assessed the PIC change charge.

Adjustments to Long Distance Bills

Concessions should be made to consumers whose long distance service is changed without their authorization. However, unauthorized changes occur for many reasons, not all of which are fraudulent, for example: misunderstandings among family members regarding who may sign an LOA, human error in processing an order form, or simply confusion between individuals. OSC suggests that, when an unauthorized PIC change occurs and the customer uses the service of the new carrier, the customer is responsible for payment of charges to the carrier whose service was used equal to the amount which would have been charged by the previously authorized carrier.

Even when an unauthorized carrier is used, the consumer receives value for the services used. Furthermore, the carrier incurs costs when providing service to the consumer (for example, access charges). By requiring the consumer only to pay an amount equivalent to the charges that would have been incurred by the previous carrier, the consumer is not harmed and payment is made for value received.

Conclusion

OSC supports the Commission's actions to develop rules pertaining to Letters of Agency which will ensure that consumers understand these agreements. The Commission's rules, however, should remain focused on the LOA content and should not regulate marketing efforts or the specific language or form of the document. The LOA should be permitted to be attached to other documents, as long as the LOA is a separate agreement whose sole purpose is to initiate a primary carrier change.

There is no need to treat business and residential consumers differently. The issue relating to PIC changes, including the authority of the individual signing the LOA apply to both types of accounts.

Consumers should be responsible for payment of long distance charges even when an unauthorized PIC change occurred. Unauthorized PIC changes occur for many reasons other than a carrier's intentional action. The consumer should be responsible for payment of an amount equal to the charges that would have been incurred by the previously authorized carrier.

Finally, the issues involved with the presubscription process go beyond LOAs and should also address the availability of billing account name/authorized consumers to interexchange carriers. OSC recommends that the Commission require LECs to provide billing account information to IXCs upon request and for a reasonable price.

Respectfully submitted this 15th day of December 1994.

Kirk Smith

Kirk Smith
President
Operator Service Company
1624 Tenth Street
Lubbock, TX 79401